IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 39 OF 2004.

Shri Peter Menon,
presently lodged at the
Central Jail, Aguada,
Sinquerim, Bardez, Goa. ....
Petitioner.

Versus

1. State of Goa.
Through the Superintendent
Central Jail, Aguada, Goa.

2. Through the Inspector General of
Prisons, Collectorate of North,
Panaji, Goa. ...
Respondents.

Smt. Asha Dessai, Advocate for the Petitioner.

Shri S.R. Rivonkar, Government Advocate for the Respondents.

CORAM: N. A. BRITTO, J.

DATE: 2n SEPTEMBER, 2004.

ORAL JUDGMENT:

Rule. By consent heard forthwith.

2. Heard Smt. Asha Dessai, the learned counsel for the Petitioner and Shri S.R. Rivonkar, the learned Government Advocate appearing on behalf of the respondents.

3. The Grievance of the petitioner in this petition filed under Article 227 of the Constitution of India is that the Superintendent of Jail refused to accept his wife as surety inspite of the fact that the wife of the petitioner had produced before him necessary papers showing that she owned property, and, insisted that the petitioner's wife produce either cash security of Rs.10,000/- or FDR in the like amount to comply with the orders of the I.G.P., ordering the release of the petitioner on parole.

4. On behalf of the petitioner/prisoner, it has been submitted by the learned counsel, Smt. Dessai that as a result of the said Superintendent not accepting the said property papers towards the solvency of the wife of the petitioner as a surety, she was compelled to borrow an amount of Rs.10,000/- on payment of interest and make a fixed deposit to be produced before the said Superintendent.

5. On the other hand, Shri Rivonkar, the learned counsel submits that cash security or security in the form of FDR is insisted because it becomes easier to recover the amount in case there is a default made by the prisoners in not adhering to the terms of the Bond under which they are released on parole. Shri Rivonkar also submits that since the petitioner has already been released on parole, nothing survives in the petition.

6. Learned Counsel Smt. Dessai submits that the petition is

required to be decided so that such instances are not repeated in future. Learned Counsel further submits that this will be a fit case to impose costs on the respondents, to be paid to the petitioner.

7. Rule 24 of the Prisons (Goa, Daman and Diu Furlough and Parole) Rules, 1968 provides that the competent authority may grant parole to a prisoner subject to his executing a surety bond and a personal bond in Forms A and B respectively to observe all or any of the conditions mentioned therein and also subject to such other conditions, if any, as may be specified by the Competent Authority.

8. There can be no dispute that whether a particular person should be accepted as surety is within the sole discretion of the competent authority, namely, the Inspector General of Prisons. In other words, the discretion and responsibility for accepting a surety as solvent of the required amount is that of the Inspector General of Prisons and it is for him to discharge that duty by making such summary inquiry as he deems fit.

9. Insistence only on cash security or a FDR is bound to cause serious inconvenience to prisoners, apart from the fact that such insistence will be both arbitrary and unreasonable. A solvency certificate from the revenue authorities could be insisted only in cases of doubt. In appropriate cases the competent authority may even accept

affidavits in proof of the facts of solvency of the sureties. Solvency of sureties could also be assessed not only on the basis of immovable properties owned by them, but also on the basis of movable properties owned by them.

10. The action of the Superintendent of insisting that the surety produce only cash security or security in the form of FDR, is without authority of law, apart from the fact that it is arbitrary and unreasonable and such an action cannot be countenanced.

11. In view of the above, the Order of the Superintendent that the petitioner's wife ought to produce only cash security or security in the form of FDR, therefore deserves to be set aside.

12. Rule is made absolute on the above terms. Considering the facts, there will be no order as to costs.

N. A. BRITTO, J.

sl.